

**DEPARTMENT OF STATE REVENUE****LETTER OF FINDINGS NUMBER: 98-0428  
STATE GROSS RETAIL TAX  
For Years 1993, 1994, AND 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES****I. State Gross Retail Tax – Purchase of reprographic equipment.**

**Authority:** IC § 6-2.1-2-4; IC § 6-2.5-5-3

Taxpayer protests assessment of use tax against the purchase of reprographic equipment.

**II. State Gross Retail Tax – Leasing of photocopying equipment.**

**Authority:** 45 IAC 2.2-4-27; 45 IAC 2.2-5-15; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1

Taxpayer protests assessment of use tax against the purchase of photocopying equipment.

**III. State Gross Retail Tax – Procedural**

Taxpayer requests the Department to review audit workpaper calculations.

**IV. State Gross Retail Tax – Negligence penalty.**

**Authority:** 45 IAC 15-11-2

Taxpayer protests the assessment of negligence penalty.

## **STATEMENT OF FACTS**

Taxpayer uses a variety of equipment in three separate operations. The equipment for these operations is categorized as FM (facilities management) reprographic equipment, commercial center equipment (both photocopiers and reprographic equipment), or convenience copiers. Reprographic equipment differs from photocopy equipment by both the quality and sophistication of its output and use. The photocopiers are used by all personnel on an as needed basis, the reprographic equipment is only operated by personnel with special training in its operation. The photocopiers produce reproductions on single sheets, while the reprographic equipment recreates the document, including bindings and computer assisted design modifications, as required. The convenience photocopiers are positioned pursuant to lease agreements where taxpayer operates a reprographic center within a client's building. The FM reprographic equipment provides specialized print services at the taxpayer staffed and operated reprographic centers. The commercial center reprographic equipment is located in taxpayer operated locations, staffed by taxpayer, and used for commercial work on either an overflow basis from the facilities management centers or from businesses with no other taxpayer contacts.

**I. State Gross Retail Tax** – Taxpayer protests assessment of use tax on its purchase of reprographic equipment.

## **DISCUSSION**

IC § 6-2.5-5-3 provides an exemption for purchases of machinery and equipment that are used in direct production of tangible personal property. IC § 6-2.5-5-3 provides, in relevant part:

(a) For purposes of this section:

....

(2) Commercial printing as described in IC § 6-2.1-2-4 shall be treated as the *production and manufacture* of tangible personal property. (*Emphasis added*)

IC § 6-2.1-2-4(7) describes commercial printing thus:

(7) the business of commercial printing that results in printed materials, excluding the business of photocopying.

Here taxpayer will be using the equipment and machinery in connection both with commercial reprographic centers and at Facilities Management centers. While the only exclusion to the exemption in the gross income statute is for photocopying activities, the technologies used in this production process by taxpayer may include photocopying or other technologies including printing or photographic technologies. The common thread is that all of the applications in question are for taxpayer's production of documents-which use is the production of tangible personnel property- for the taxpayer's customers.

Inasmuch as taxpayer's activities are directed to the creation of documents, which are tangible property- IC § 6-2.5-5-3(b) states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Therefore, the exemption applies to the equipment acquired by taxpayer for taxpayer's direct use in the direct production of tangible personal property.

### **FINDINGS**

Taxpayer's protest is sustained as to the purchase of reprographic equipment to be used solely by taxpayer's staff in the direct production of tangible personal property.

## **II. State Gross Retail Tax – Leasing of photocopying equipment.**

### **DISCUSSION**

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC § 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC § 6-2.5-3-2, "an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

The Department assessed use tax based on the premise that lessee's use of photocopiers was not a purchase of commercial printing and the lease for the photocopiers was a service contract rather than a lease of tangible personal property.

Taxpayer argues the tax is not applicable pursuant to 45 IAC 2.2-5-15, which states:

The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose for reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

The convenience photocopiers are separately listed on the facilities management contract. The photocopiers are billed to lessee as a component of the facilities management bill and are used by lessee's staff, with the contract requiring the copiers to be placed on the customer's premises for the customer's employees' use with taxpayer staff maintaining the copiers. The requisite amount of control by the customer is present to establish a rental of the tangible property as anticipated by 45 IAC 2.2-5-15; consequently, the state gross retail tax does not apply.

### **FINDINGS**

Taxpayer's protest is sustained.

#### **III. State Gross Retail Tax – Procedural**

### **DISCUSSION**

Taxpayer identifies two entries from the audit workpapers, both dated 4/7/93 and listed as references 289193 and 289538. Taxpayer notes the entries appear twice in the audit workpaper and requests these entries be removed.

### **FINDINGS**

Taxpayer protest sustained pending audit verification.

#### **IV. State Gross Retail Tax – Negligence penalty.**

45 IAC 15-11-2(c) requires the department to waive the penalty if the taxpayer demonstrates the error was due to reasonable cause, which is defined as exercising “ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.” Taxpayer based its position on a reasonable interpretation of a departmental letter of advice, which is one of the factors explicitly noted in the code as demonstrating reasonable cause.

### **FINDINGS**

Taxpayer's protest is sustained.